IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO.4261/2007.

Smt.Usha Devi
Vs.
Mahendra Agarwal and ors.

Date of Order : 20/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Nitin Jain for the petitioner.
Dr. (Mrs.) Swati Bhati for respondent No.1.
Shri K.N. Gupta for respondent No.3.

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BY THE COURT:-

The petitioner has challenged the order passed by the Additional District and Sessions Judge (Fast Track) No.3, Ajmer Camp, Kishangarh dated 26/5/2007 by which injunction order passed in her suit by the Court of learned Additional Civil Judge (Junior Division) Kishangarh was reversed. The petitioner who is plaintiff before the trial court filed a suit for injunction in regard to dispute of the way in front of Plots No.10 and 11 which she claims to have purchased from colonizer of Agrasen Nagar, patta of which was issued in her favour by the government on 2/5/1988.

2) On the other hand, defendant-respondent claimed that the aforesaid plots No.10 and 11 of the petitioner are last plots at the outer edge of Basant Bihar Colony, boundaries of which are joined with outer edge of Agrasen Nagar Colony. Plot of the defendant is last plot in that colony and according to the defendant, between these two plots, there is no such other plot but only a strip of land in the size of 6x6 feet and no permanent way of 40 feet.

3) Heard learned counsel for the parties.

4) Shri Nitin Jain, learned counsel for the petitioner argued that the learned first appellate court has committed an error of law in interfering with the finding recorded by the trial court and has attached more credence to the patta issued by the colonizer over the patta issued by the Government. It was argued that though Plots No.19 & 20 situated at the back of Plots No.10 and 11 are owned by the petitioner but independent entry to Plots No.19 and 11 would be only from road in dispute.

5) On the other hand, Dr.(Mrs.) Swati Bhati, learned counsel for the defendant-respondent argued that this is the only plot which is owned by the

defendant where he wishes to construct his residential house. However, on account of ongoing litigation, it has not been able to do so. It was further argued that the learned first appellate court has given cogent and valid reasons based on correct appreciation of the evidence for reversal of the injunction order passed by the trial court.

6) Having heard learned counsel for the parties and perused the material on record, I find that the issue whether the land in dispute is part of the public way or not needs to be adjudicated upon by the court on the basis of both the evidence of the parties. If the construction on the land which is subject-matter of dispute is allowed to be raised at this stage, this might raise question of equity and may not be in the interest of either of the parties.

7) I therefore while directing the parties to maintain status-quo pending trial of the suit, direct that evidence of petitioner shall be recorded by the trial court within a period of six weeks from the date certified copy of this order is produced before it with no further adjournment being allowed beyond that period and at the same time, evidence of the

defendant shall also be concluded within a period of six weeks thereafter. The trial court then proceed to decide the injunction suit within one month after the expiry of aforesaid period of three months.

This petition is accordingly disposed of with no order as to costs.

(MOHAMMAD RAFIQ), J.

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